

Decision **DRAFT DECISION OF ALJ ECONOME** (Mailed 10/28/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
For Certain Findings Regarding the Settlement
Agreement and General Release Made May 1,
2000, By and Between South San Joaquin
Irrigation District and Pacific Gas and Electric
Company (U 39 E).

Application 00-07-031
(Filed July 18, 2000)

ORDER DISMISSING APPLICATION WITHOUT PREJUDICE

I. Summary

This order dismisses Pacific Gas and Electric Company's (PG&E) application without prejudice.

II. Background

South San Joaquin Irrigation District (the District) and PG&E entered into a settlement agreement on May 1, 2000 relating to the District's allegations that PG&E adversely affected the District's efforts to enter into the electric distribution business. The settlement includes an option for the District to acquire by condemnation certain PG&E distribution facilities, and imposes a deadline relating to the condemnation.

Following the execution of the settlement agreement, PG&E filed an application with the Commission to determine whether Pub. Util. Code § 851 should apply to the transfer of assets under the settlement. Because of the

pendency of this application, the parties agreed to extend the deadline for the condemnation to 60 days following a Commission decision satisfactory to PG&E.

On September 12, 2003, PG&E responded to an Administrative Law Judge (ALJ) ruling directing PG&E to report on the current status of the settlement agreement and the condemnation action. PG&E reports that the District had not filed the condemnation action before execution of the settlement agreement, nor has it subsequently. PG&E also reports that on April 6, 2001, it filed its bankruptcy petition. According to PG&E, the parties would have to seek relief from the automatic stay of Bankruptcy Code § 362 to file the condemnation action and obtain entry of final judgment. PG&E does not indicate that the parties have done so or that they so intend.

III. Discussion

The circumstances have materially changed since the filing of this application. When, or whether, the condemnation action contemplated by the settlement will occur is unsettled. The parties cite certain events, such as PG&E's bankruptcy filing, which have intervened. Because the Commission generally does not issue advisory opinions, we believe it prudent to dismiss this application without prejudice to PG&E filing it at a later point in time when the application can be processed with more certain considerations.

IV. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on November 17, 2003 by PG&E. We make no changes to the draft decision.

V. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this proceeding.

Findings of Fact

1. The circumstances have materially changed since the filing of this application.
2. There is currently great uncertainty about when, whether, and under what terms the settlement existing at the time this application was filed will be carried out.
3. In general, the Commission does not issue advisory opinions.

Conclusions of Law

1. This application should be dismissed without prejudice.
2. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application 00-07-031 is dismissed without prejudice.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.